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**NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS**



IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION EIGHT

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| THE PEOPLE,<br><br>Plaintiff and Respondent,<br><br>v.<br><br>MARQUIS MITCHELL,<br><br>Defendant and Appellant. | B216572<br><br>(Los Angeles County<br>Super. Ct. No. NA078877) |

APPEAL from a judgment of the Superior Court of Los Angeles County. Joan Comparet-Cassani, Judge. Affirmed.

Lea Rappaport Geller, under appointment by the Court of Appeal, for Defendant and Appellant.

Edmund G. Brown, Jr., Attorney General, Dane R. Gillette, Chief Assistant Attorney General, Pamela C. Hamanaka, Assistant Attorney General, Victoria B. Wilson and Steven D. Matthews, Deputy Attorneys General, for Plaintiff and Respondent.

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Appellant Marquis Mitchell physically attacked his girlfriend, Wendy C., on June 29, 2008. He was convicted of two counts of corporal injury to a cohabitant (Pen. Code, § 273.5, subd. (a) (section 273.5(a)), two counts of false imprisonment (§ 236), and one count of assault by means of force likely to produce great bodily injury (§ 245, subd. (a)(1)).[1] There also were findings of two prior convictions for violating section 273.5, one prior strike, and one prior conviction that resulted in a prison term.

Appellant was sentenced to a total of 11 years eight months in prison. He contends that some of the counts should have been stayed pursuant to section 654. We reject the contention and affirm.

## FACTS

Wendy was the chief witness at the trial. She testified that she began dating appellant in October 2007. She briefly stopped all contact with him in December of that year, after he beat her up. They began dating again in January 2008. They became engaged to be married a month later, and moved into an apartment together on March 15, 2008.

As to the date of the incident, June 29, 2008, Wendy testified that she was away from the apartment all afternoon, doing laundry. When she returned, appellant was drinking "Cavassier [Courvoisier?]" with two men. He told Wendy that she had changed her shirt. She replied that she had not done so. He asked her to kiss him. She refused. At his request, they went into the bedroom, leaving his two friends in the living room. Wendy did not know the friends' names. We will call them Friend No. 1 and Friend No. 2.

Inside the bedroom, appellant asked Wendy where she had been, and then suddenly attacked her. First, he punched her in the chest. Then, he pushed her against a wall and choked her, squeezing her neck so forcefully that she could not speak or breathe. They struggled and ended up in the bathroom. He continued to yell at her. He pushed

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[1] Subsequent code references are to the Penal Code unless otherwise stated.

her so hard that she fell into the bathtub and hit her head on the edge of the tub. She yelled for help. Friend No. 1 came into the bathroom. Wendy asked him not to leave. He told her he would not leave without her. He threw his arms around appellant's body and held him.

Wendy ran from the bathroom into the living room and picked up her keys. Appellant grabbed her around the waist and pulled her back. She clung to the couch and screamed at him to let her go. He pulled on her so hard that he ripped off the belt loops on her jeans. Friend No. 1 grabbed him from behind and yelled, "Let her go, just let her go." Appellant released Wendy, and she ran out the apartment.

Wendy ran down the hallway, out of the building, and down the alley to her vehicle. She got into it and started to drive. Appellant opened the door of the car. He pulled her out of the car by her hair and dragged her along the alley by her hair. She kept asking to leave, and he kept telling her she was not leaving. Friend No. 1 came outside and grabbed appellant. Appellant let Wendy go, and she ran to her car. When she entered it, she saw that the keys were missing from the ignition. Friend No. 1 continued to hold appellant and demanded the keys. Appellant broke away from Friend No. 1, held Wendy against a wall, and told her she was not going to leave him. She tried to break free, but he stopped her.

At that point, Friend No. 2 also became involved. He pushed appellant back and held him. Friend No. 1 asked Wendy where she wanted to go. She asked to go to her mother's house. She was dizzy and having difficulty breathing. Friend No. 1 drove her in his car to a nearby Denny's restaurant, where she threw up in the parking lot. Friend No. 1 got her some water. She told him she wanted to return to the alley and get the keys to her car, so she could drive away. They drove back to the alley. Wendy stayed inside of Friend No. 1's car. Friend No. 2, who had remained with appellant, came outside and brought Wendy her keys. She felt light-headed, but she managed to drive away and obtain help from her mother.

Afterwards, Wendy had multiple bruises; pain in her neck, back and throat; red marks on her neck from being choked; and a knot on her head; and a bad headache from

hitting her head against the bathtub. Those injuries were verified at the trial by Wendy's mother and a police officer who saw Wendy after the incident. There also was testimony from two neighbors who looked out their windows into the alley and saw part of appellant's attack on Wendy.

**DISCUSSION**

In closing argument, the prosecutor told the jury that the counts related in sequential order to appellant's behavior. Count 1, the first section 273.5(a) count, was based on appellant's choking of Wendy in the bedroom. Count 2, assault by means of force likely to produce great bodily injury, arose from appellant's pushing Wendy in the bathroom, with enough force that she fell into the bathtub and hit her head against it. Count 3, false imprisonment, referred to the point when appellant grabbed Wendy in the living room, ripped her clothes, and prevented her from leaving the house. Counts 4 and 5, the second counts of section 273.5(a) and false imprisonment, were based on appellant's preventing Wendy from leaving in the alley, and his violent acts toward her in the alley.

Appellant's sentence of 11 years eight months in prison resulted from this calculation:

Count 1: the upper term of five years, doubled to 10 years for one strike;

Count 2: one consecutive year, as one-third of the midterm;

Count 3: eight months, consecutive, as one-third of the midterm;

Count 4: four years, concurrent;

Count 5: two years, concurrent.

Appellant contends that counts 3, 4 and 5, the two counts of false imprisonment and one of the section 273.5 counts, should have been stayed, due to section 654's prohibition against multiple punishment.

Section 654 states, in pertinent part: "An act or omission that is punishable in different ways by different provisions of law shall be punished under the provision that provides for the longest potential term of imprisonment, but in no case shall the act or omission be punished under more than one provision."

Appellant relies on this principle: "'Whether a course of criminal conduct is divisible and therefore gives rise to more than one act within the meaning of section 654 depends on the intent and objective of the actor. If all of the offenses were incident to one objective, the defendant may be punished for any one of such offenses but not for more than one.'" (*People v. Latimer* (1993) 5 Cal.4th 1203, 1208, quoting *Neal v. State* (1960) 55 Cal.2d 11, 19 (*Neal*).) Appellant argues that he had only one objective, to hurt Wendy, so the three counts in question should have been stayed.

The flaw in appellant's argument is that "decisions since *Neal* have refined and limited application of the 'one intent and objective' test . . . ." (*People v. Kwok* (1998) 63 Cal.App.4th 1236, 1253.) "'[A] course of conduct *divisible in time*, although directed to one objective, may give rise to multiple violations and punishment. [Citations.]'" (*Ibid.*, quoting *People v. Beamon* (1973) 8 Cal.3d 625, 639, fn. 11, italics added by *Kwok*.) It is the "defendant's intent to commit a number of separate base criminal acts upon his victim, and not the precise code section under which he is thereafter convicted, which renders section 654 inapplicable." (*People v. Harrison* (1989) 48 Cal.3d 321, 337-338.) "[M]ultiple crimes are not one transaction where the defendant had a chance to reflect between offenses and each offense created a new risk of harm." (*People v. Felix* (2001) 92 Cal.App.4th 905, 915.)

Here, the prosecutor properly divided appellant's behavior into "separate base criminal acts" that appellant committed at different points in the same incident. Appellant "had a chance to reflect between offenses," and "each offense created a new risk of harm." Therefore, there was no violation of section 654.

**DISPOSITION**

The judgment is affirmed.

FLIER, J.

We concur:

BIGELOW, P. J. RUBIN, J.